

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT WARSHAWER and KIM  
WARSHAWER, a married couple;  
GLENN BUTLER, Shareholders'  
Agent for the former shareholders of  
Black Rock Cable, Inc.,

Plaintiffs,

v.

RICK TARNUTZER, an individual;  
NANCY TARNUTZER, an individual,

Defendants.

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RICK TARNUTZER, an individual,

Third-Party Plaintiff,

v.

OH WDH HOLDCO, LLC, a limited  
liability company; and WDH BLACK  
ROCK, a limited liability company,

Third-Party Defendants.

Case No. 2:14-cv-001042-RSM

DECLARATION OF ROBERT  
WARSHAWER IN SUPPORT  
OF PLAINTIFF GLENN  
BUTLER'S MOTION FOR  
SUMMARY JUDGMENT

1 ROBERT WARSHAWER declares as follows:

2 1. I am the former President, Secretary, and Treasurer of Black  
3 Rock Cable, Inc. ("Black Rock"). I owned more than 50% of Black Rock prior to its  
4 merger into WDH Black Rock, LLC ("WDHBR") in November 2012 (the "Black  
5 Rock Merger"). I am over eighteen years of age and otherwise competent to  
6 testify. I make this declaration based on my own personal knowledge or, where  
7 appropriate, based on the business records of Black Rock.  
8

9 2. As the former President, Secretary, and Treasurer of Black  
10 Rock, and as a member of the Black Rock Board of Directors, I am familiar with  
11 Black Rock's corporate documents, including Black Rock Board resolutions,  
12 minute books, stock registers, and other company records.  
13

14 3. Black Rock was incorporated in Nevada, but operated  
15 exclusively in Washington. Black Rock's headquarters and principal place of  
16 business was Bellingham (Whatcom County).  
17

18 4. Black Rock began as a cable TV provider but abandoned that  
19 aspect of its business in 2002. By 2003, Black Rock's business was based on  
20 building, owning, and operating its own fiber optic network in Bellingham,  
21 Washington. In 2004, Black Rock expanded its operations from Bellingham  
22 throughout Whatcom County, Washington. In 2005, Black Rock expanded its  
23 operations into Skagit County, Washington. In 2006, Black Rock expanded its  
24 operations into Snohomish County, Washington.  
25  
26

1           5.     Given the profitability of Black Rock's high-speed fiber optic  
2 service, it made sense for Black Rock to expand its fiber optic cable network as  
3 rapidly as practical. Black Rock funded its expansion with its own revenues and a  
4 line of credit at Horizon Bank.  
5

6           6.     In 2007, Black Rock began exploring alternative ways of  
7 financing its cable network construction because of its increasing concerns about  
8 Horizon Bank's publicly acknowledged financial struggles.  
9

10          7.     In September 2007, I loaned Black Rock \$700,000. I raised the  
11 \$700,000 by personally borrowing from family members, including \$100,000  
12 borrowed from my mother-in-law, Nancy Tarnutzer, on June 6, 2007.  
13

14          8.     Although I borrowed the \$100,000 from Nancy Tarnutzer, the  
15 loan arrived as a \$100,000 check from a checking account owned jointly by Nancy  
16 Tarnutzer and Rick Tarnutzer, Nancy Tarnutzer's son. The check was payable to  
17 me personally, not to Black Rock.  
18

19          9.     Black Rock followed all corporate formalities in documenting  
20 my \$700,000 loan to Black Rock, including obtaining approval of the loan by the  
21 non-interested Board members (i.e., all Board members except me) and adopting a  
22 written Board resolution approving the loan in October 2007. A copy of the Board  
23 Resolution approving the \$700,000 loan from me to Black Rock in October 2007 is  
24 Exhibit A to this declaration.  
25

26          10.    From 2007 through 2012, Black Rock continued to operate

1 successfully. In November 2012, the Black Rock shareholders approved the Black  
2 Rock Merger with WDHBR, and the Black Rock Merger closed.

3  
4 11. A year after the Black Rock Merger, in November 2013, Rick  
5 Tarnutzer sent me a letter claiming that Nancy's \$100,000 loan to me was his own  
6 personal investment in Black Rock. He asserted that his "investment" had made  
7 him an owner in Black Rock. A copy of that letter is attached as Exhibit B.

8  
9 12. Exhibit C to this declaration is a letter I received from Jim  
10 Keathley, counsel for Rick Tarnutzer, in May 2014, asserting that Tarnutzer "had  
11 an ownership interest in Black Rock," and as a Black Rock "shareholder," was  
12 entitled to "at least \$5 million" of the Black Rock Merger proceeds.

13  
14 13. Exhibit D to this declaration is a Notice of Indemnification  
15 Claim from Cairncross & Hempelmann to the former Black Rock shareholders and  
16 an escrow agent. The Notice of Indemnification Claim directed the escrow agent  
17 to retain the remaining \$3 million in Black Rock Merger funds in escrow pending  
18 the outcome of Rick Tarnutzer's Black Rock ownership claim.

19  
20 14. I never told Rick Tarnutzer or Nancy Tarnutzer that they  
21 could or would become a shareholder in Black Rock. I never told Rick Tarnutzer  
22 or Nancy Tarnutzer that I would transfer any of my stock in Black Rock to them.

23  
24 15. The Black Rock Board of Directors was never asked to  
25 approve, and did not approve, the issuance of any shares of stock to Rick  
26 Tarnutzer. The Black Rock Board of Directors did not authorize the issuance or

1 transfer of stock to Rick Tarnutzer, whether through Board resolution, unanimous  
2 written consent, formal action at a Board meeting, or otherwise. There are no  
3 corporate records showing that Rick Tarnutzer ever owned any shares in Black  
4 Rock.  
5

6 16. Exhibit E to this declaration is Section 3.02 of the Black Rock  
7 Merger Disclosure Schedule, which is a capital table showing all owners of Black  
8 Rock stock at the time of the Black Rock Merger.  
9

10 17. Rick Tarnutzer's name does not appear on the list of Black  
11 Rock shareholders provided to WDHBR as part of the Black Rock Merger. Rick  
12 Tarnutzer is not a party to the Black Rock Shareholders' Agreement.  
13

14 18. Rick Tarnutzer's name does not appear in the Black Rock  
15 minute books, on any Black Rock stock registry, or anywhere else in the Black Rock  
16 corporate documents.  
17

18 19. Exhibit F to this declaration is a copy of the Black Rock Stock  
19 and Signature Register as of the date of the Black Rock Merger (November 30, 2012).  
20

21 20. Exhibit G to this declaration is a copy of the latest version of  
22 the Black Rock Bylaws.  
23

24 21. Exhibit H is a copy of the latest version of the Black Rock  
25 Shareholders' Agreement.  
26

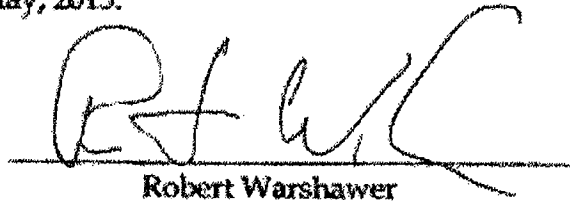
22. Exhibit I is a copy of the Black Rock Articles of Incorporation.

23. I am not aware of any Black Rock corporate documents that

1 sought to delegate authority to me to issue stock on behalf of Black Rock.

2 I declare under penalty of perjury of the laws of the United States  
3 that the above is true and correct.  
4

5 DATED this 14th day of May, 2015.

6   
7  
8 Robert Warshawer

**CERTIFICATE OF SERVICE**

I hereby declare under penalty of perjury of the laws of admonish the United States and the State of Washington that on May 14, 2015, I caused to be served a copy of the foregoing document to the following persons in the manner indicated below by the following methods:

Kevin P. Sullivan  
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Warshawer

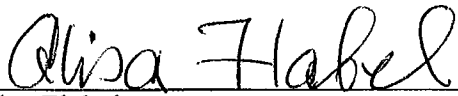
☒ by CM/ECF  
☐ by Electronic Mail  
☐ by Facsimile Transmission  
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☐ by Legal Messenger  
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Attorneys for Defendants

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☐ by Electronic Mail  
☐ by Facsimile Transmission  
☐ by First Class Mail  
☐ by Legal Messenger  
☐ by Overnight Delivery

I declare under the penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

EXECUTED this 14th day of May, 2015, at Seattle, Washington.

  
\_\_\_\_\_  
Alisa Flabel

DECLARATION OF ROBERT WARSHAWER - 7

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